

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
ANGELO PENA, ROLANDO ROJAS,  
JOSE DIROCHE, and FRANKLIN  
SANTANA, individually and on  
behalf of others similarly  
situated,

Plaintiffs,

-against-

SP PAYROLL, INC., NICHOLAS  
PARKING, CORP., IVY PARKING  
CORP., BIENVENIDO, LLC, CASTLE  
PARKING CORP., SAGE PARKING  
CORP., and SAM PODOLAK,

Defendants.  
----- X

) Index No.  
) 07 CV 7013

DEPOSITION OF DAVID SAPERSTEIN  
New York, New York  
June 18, 2008

Reported by:  
Judi Johnson, RPR, CLR  
Job No.: 17084

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110 East 59th Street  
New York, New York

June 18, 2008  
10:00 A.M.

Deposition of DAVID SAPERSTEIN, held at the offices of MICHAEL FAILLACE & ASSOCIATES, P.C., 110 East 59th Street, New York, New York, pursuant to Notice, before Judi Johnson, a Registered Professional Reporter, a Certified LiveNote Reporter and Notary Public of the State of New York.

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that filing and sealing and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- oiks -

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APPEARANCES:

MICHAEL FAILLACE & ASSOCIATES, P.C.

Attorney for the Plaintiff

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New York, New York 10022

BY: RICHARD HERNSTEIN, ESQ.

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620 Eighth Avenue

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DAVID SAPERSTEIN,

Called as a witness herein, having

first been duly sworn, was examined and

testified as follows:

BY THE REPORTER:

Q Please state your name and address for the record.

A David Saperstein, 357 Pocono Mountain Lake Estates, Bushkill, Pennsylvania 18324.

EXAMINATION

BY MR. BERNSTEIN:

Q Probably by now no introductions are needed, but my name is Rich Bernstein. I represent the plaintiffs in the lawsuit that we've been concerned with in the depositions yesterday, last week. And I want to be sure the court reporter has your home address.

MR. BERNSTEIN: You have it on the record?

THE REPORTER: Yes.

Q Will you please state your business address for the record?

A 575 Washington Street,

Q Is that in Manhattan?

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A Yes.

Q What office is located there?

A It's an office that I share with a friend of mine.

Q And what company or companies do you work for now?

A SP Payroll, and I have my own company that I work for and a number of other restaurants that are unrelated to this.

Q The Washington Street address you said --

A Yes.

Q -- is that in downtown Manhattan or somewhere else?

A No, it's downtown. It's right off of Houston Street.

Q And do you do work for SP Payroll at that location?

A Yes.

Q Do you ever do work for SP Payroll at any other location?

A Occasionally, I visit the locations: Bienvenido, Castle, Sage, Marvel, J&amp;L. There are a couple of corporations that are no

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too much work there. I visited there to maintain the video surveillance system and possibly look at -- there are lifts in the garage. If there were problems, I'd look at those.

Q In the garage on Second Avenue?

A Yes.

Q And what was the video surveillance system that was there?

A It's just a basic surveillance system. If Sam needed to see a specific instance, I would go and put it on a flash drive so he would just be able to view that instance.

Q That's Sam Podolak?

A Yes.

Q Was the video -- was there a video at the Second Avenue garage location or other locations or some combination?

A Some garages have cameras, different systems. Some are more elaborate than others.

Q Which garages have cameras?

A Well, the one at 1832 Second Avenue has; I believe the one at 155th Street had. I believe the one at 121st Street has, but I'm

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linger -- well, those two are no longer in existence and a few more that are no longer as well.

Q Did you visit them when they were operating?

A Yes.

Q When did you start working for SP Payroll.

A About 2002.

Q Can you tell me more specifically when in 2002?

A I'm going to guess the later part of the year.

Q Where did you work at that time, when you started with SP Payroll? Did you work in an office somewhere?

A The 575 Washington Street address was mainly where I did most of my paperwork. At other times, I did visit the locations. So the specific locations that we mentioned.

Q Did you ever work in the Second Avenue office of SP Payroll?

A I visited there. I don't really do

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not positive.

Q Which one is that at 121?

A It's a new garage. I believe the name is Magic.

Q Are there any others that you think have cameras?

A I think Hien might. I don't really remember.

Q Do you know when cameras were first installed at any of those locations?

A All recent.

Q How recent?

A Eight months, maybe.

Q Have you ever seen any of the videotapes from those cameras?

A Not from -- the only ones I've seen is 1832. I don't really look at the other ones.

Q At 155th Street and Bienvenido, do you know if there's one or more than one camera?

A I don't remember.

Q Do you know what area of the garage either of those --

A I believe it's at the entrance.

Q -- either of those camera setups are



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focused on?

A I believe the entrance.

Q That's true for both, as far as you know?

A I believe so.

Q Do the cameras operate 24 hours a day or something else?

A I believe it's 24 hours.

Q When you say the entrance, are you referring to the driveway where cars go in and out?

A Yes.

Q Is there any other entrance for people walking in and out?

A No. Are we referring to all the garages?

Q Well, I'm asking about the ones that have cameras.

A 1832 currently has two entrances, one where cars come in, one where people can go out but not cars.

Q Okay. I'm asking about 155th and Bienvenido.

A One entrance.

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Q How often have you visited the SP Payroll office on Second Avenue?

A Over what period of time?

Q Well, is it different at different periods of time?

A It's rare.

Q Okay.

A Maybe in the entire time, 20 times.

Q And when you did go to that office, what generally was your purpose?

A Drop something off for Sam. Check on the lifts. If there was a car there that had damage, I had to go once and look -- specifically look at the car. Pick up papers from Sam. That's it.

Q What type of papers did you pick up, if you recall?

A There were occasions where I would pick up the payroll reports and store them in my office. There were occasions where I just picked up violations they would have to go and answer.

Q Besides going to the office to pick up payroll reports or other materials, was there

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Q Do you know how often the videotapes are changed at either of those locations?

A No, I don't know if it's video or digital --

Q Or whatever the recording is?

A Yeah, I'm not familiar with the actual device.

Q Do you know how long the tapes or recordings are stored?

A If it's digital, which I believe it is -- I do not believe it's video. If it's digital, it loops and when it's full it just rerecords over itself.

Q Do you know how often the rerecording happens?

A It's probably anywhere between three days and two weeks.

Q What do you base that on that you think it's three days to two weeks?

A My knowledge of how much a specific size hard drive can hold.

Q Are you referring to the hard drive in the video installation or something else?

A Inside the video recorder.

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some other method whereby papers or records were provided to you for your work?

A Yes.

Q How did that work?

A There was a period of time where I would actually meet Raj Kisson at 155th Street. I would meet Raj there at approximately 4:00 and 4:30 in the morning. I would give him any paperwork that I had for Sam. He would give me any paperwork that I needed, and that -- for a very long time, that was one method that paperwork flowed from one point to another point.

Q And did that change at some point?

A Yes. When we lost 155th Street, I believe I started to meet Raj at 121st Street.

Q Is that the current practice?

A Currently, paperwork doesn't flow back and forth as much as it used to. Mostly I get my paperwork from Sam through fax. Sam gets my paperwork again, either through fax or I'll meet Raj at a predetermined place.

Q Let me back up a little bit to some

background type questions that I skipped when we

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started.

Could you summarize your education for me, formal education?

A Associate's in business and 20 credits away from a criminal justice degree.

Q When did you get your associate's degree?

A I don't remember.

Q Where did you get that from?

A Brooklyn College.

Q And you're in a criminal justice program now?

A Yes.

Q Where is that?

A University of Phoenix.

Q And could you also summarize your employment history for me?

A Aside from working for SP Payroll, I have my own company that does payroll and other consulting, for lack of a better word, services to restaurants.

Q And when did you start in that business, your separate business? How long have you been doing that?

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A Since 1990 something. Late 1988, '98, '99, something like that.

Q Before that and before SP Payroll, did you have some other employment?

A Yes.

Q Maybe you could summarize this for me.

A I'm not sure of the dates, but while I was in college I worked for Dollar Rent a Car. After college, I worked for a small parking company, Bro Bro Operating Company. They had parking garages and car rentals. Then after them, I worked for Thrifty Car Rental, who are the same owners as Bro Bro. Then after that, I started my own and went with Sam, SP Payroll.

Q Where was Bro Bro located?

A Bro Bro had offices on, I think it was 16 Court Street.

Q In Brooklyn?

A In Brooklyn. And later at 575 Washington Street in Manhattan.

Q And what about Thrifty?

A Also 575 -- sorry, Thrifty was 16 Court Street. After Thrifty was Smart Park.

Q Was it the same ownership?

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A Sons. Sons of Bro Bro.

Q Do you recall how long you worked for them?

A Maybe three years.

Q What type of work did you do for that group of companies?

A Well, Smart Park owned approximately -- operated approximately 60 garages, and I was in charge of all of the garages, including payroll and day-in-day operations.

Q How did you come to be employed by SP Payroll?

A The sons at Smart Park embezzled \$30 million from the bank, so Smart Park went out of business.

Q So how did you get in contact with SP Payroll?

A It's a small industry. I had been introduced to Sam Podoluk through a friend and he hired me.

MR. BERNSTEIN: Let's mark as

Plaintiff's Exhibit 19 the corporation's

responses and objections to interrogatories.

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(Whereupon, Defendant Corporations' Responses and Objections to Plaintiffs' First Set of Interrogatories was marked as Plaintiff's Exhibit 19 for identification, as of this date.)

BY MR. BERNSTEIN:

Q Have you had a chance to glance at that? (Hanging.)

A Yes.

Q Do you recognize it?

A Yes.

Q What is it?

A It's -- what you just said, interrogatories, and at some point I did sign it and return it to Peter Walker.

Q And you read it before you signed it?

A Yes.

Q No other questions on that, at least right now. Have you given a deposition in a lawsuit at any time before today?

A Yes.

Q When was that?

A The last one or all of them?

Q How many times have you been in a



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deposition?

A Six or seven.

Q When was the last one?

A In a friend's divorce proceeding.

Q You were a witness in that one?

A Yes.

Q Do you recall the other depositions that you gave, what type of lawsuit it was?

A Two were liability lawsuits, injury claims. One was -- I don't know the legal term for it, but when the brothers embezzled \$30 million, I was called as a witness for the bank.

Q Okay.

A And Thrifty Car Rental, the two parties were suing each other. I was called as a witness for the franchisee -- sorry, for Thrifty Car Rental. There were maybe one or two liability claims.

Q So in those instances you were a witness, you were not suing or being sued, right?

A I was a witness.

Q Have you testified under oath at any

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other time besides what you just told me?

A They do put me under oath at ECB hearings.

Q ECB?

A Environmental Control Board.

Q How often does that happen?

A Every Thursday, almost.

Q Is this in connection with SP Payroll?

A It's in connection with SP Payroll and my other entity, my company.

Q What is the nature of those hearings?

A It's usually buildings department violations. Anything from not cleaning up the sidewalk to an exit sign not working.

Q And this happens every Thursday?

A Yeah. It's every Thursday in Manhattan. Almost.

Q I see.

A I can go a month without going, but generally.

Q Okay. Aside from that, any other testimony that you've given under oath?

A No.

Q Now, when you started with SP Payroll,

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what was your title or position?

A For lack of better words, supervisor.

Q And has that changed since you started?

A Well, it's still supervisor, but I suppose you could also add payroll manager in there.

Q When did that occur that you also became payroll manager?

A I started taking over payroll responsibilities in 2003.

Q And you started with SP Payroll in 2000?

A 2002.

Q When you started, what were your responsibilities before you took over the payroll?

A As a supervisor, I just went from one location to the next, similar to what Mr. Kissoon does.

Q Okay. And when in 2003 did you take over the payroll?

A Mid-2003. I'm going to guess June.

MS. MEYERS: Don't guess.

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THE WITNESS: Sorry.

BY MR. BERNSTEIN:

Q Is that your best recall?

A Yes.

Q Did you have any involvement with the payroll before you took it over in 2003?

A No.

Q And how did that come about, that you took over the payroll sometime in 2003, mid 2003?

A I suggested ways for Sam to streamline his payroll functions.

Q What did you suggest specifically?

A Start paying everybody on the same pay schedule.

Q Okay.

A Meaning Monday to Sunday. Monday the first day, Sunday the last day of a pay period. Paying everybody out of the same operating company, which is SP Payroll, became the payroll operating company.

Q Anything else you recall suggesting to Sam at that time?

A No.

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Q What companies was -- what companies were the workers being paid out of when you suggested that?

A Each company had its own account with ADP and each company had its own payroll.

Q Did Sam adopt your suggestions?

A Yes.

Q And is that at the time that he made you payroll manager?

A It's not an official title. It's just a job description.

Q Function?

A It's a function, yes.

Q When you took over the payroll, did you implement the suggestions that you had made to Sam or did he do that before you started taking over the payroll or something else?

A Sam would've set up the accounts. I would've set up the account with ADP. Sam would set up the parameters of how -- of how much each person would get paid. But other than that, it was up to me to set up the -- I guess the process or the system.

Q When you say would, do you mean did?

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took over --

MS. MEYERS: First started?

MR. BERNSTEIN: Yes. Took over and made sure minimum wage was being paid.

A I do not believe anyone at that time was making more than minimum wage.

Q Do you know whether at any subsequent time any of the workers' paystubs have shown more than -- the check paystubs have shown more than minimum wage, either regular or overtime?

A As we sit here today?

Q As we sit here today, as the rate of pay?

A Currently there are some that do. I don't know how many.

Q Who made the decision as to what those people are paid?

A Sam.

Q Did he ever tell you on what basis he made the decision?

A No.

Q When you took over the payroll, what was the process? What was the payroll process whereby people were paid?

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A Did, yes.

MR. BERNSTEIN: Read back that last answer.

(Whereupon, the requested portion was read back by the court reporter.)

BY MR. BERNSTEIN:

Q Were you involved at that time in determining how much each worker would be paid? Did you have any input into that?

A My input was to make sure that everyone got paid at least minimum wage.

Q How did you do that?

A Made sure that their checks came out to -- at that time, I believe it was \$5.15 an hour plus whatever time and a half comes out to for anything over 40 hours a week.

Q At that time, did any of the workers' checks, and I'm asking about the checks, reflect more than minimum wage for the hours on their paystubs?

A You mean regular rate?

Q Either regular rate or overtime rate?

MS. MEYERS: At which time?

MR. BERNSTEIN: At the time that he

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A Previous to me or --

Q Previous to you, if you know?

A Previous to me. Sam did all the checks. I have no idea how he arrived at whatever he did. When I took over, within a few months, everything went ADPs, what they call PC Payroll for Windows system, and everything was done pretty much in my computer and through ADP.

Q Before you took over -- withdrawn.

Do you know whether before you took over, any workers were paid in cash as well as getting paid checks?

A Yes.

Q How did you learn that?

A There were times I had given out the pays.

Q By going to the different garages and handing out envelopes or something else?

A Either handing out the envelopes to specific employees or by giving the pays to Raj to distribute.

Q And at that time, were you involved in deciding what amount of cash would be -- was given to any of the workers?



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1 A This is while Sam was doing --

2 Q Yes.

3 A No.

4 Q Did Sam ever tell you how he arrived  
5 at the cash amounts?

6 A The specific amounts, no.

7 Q Did he tell you anything generally  
8 about how he was doing that?

9 A That he inherited the system from I  
10 believe it's Jose Tavares and his group.

11 Q Did he tell you anything else about  
12 the practice he had at that time about adding  
13 cash to the paychecks?

14 A It was to make-up for lunch -- you  
15 know, to pay them for their lunch hours. I  
16 believe that's really what the extra cash was  
17 for at that time.

18 Q That's something that Sam told you at  
19 the time?

20 A Yes.

21 Q Do you know if the workers were taking  
22 a lunch hour off from work during the time that  
23 Sam was handling the payroll?

24 A Yes.

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1 A I could've covered one. I could've  
2 gone to one garage and not gone to another or I  
3 could've gone to all of them. There was no set  
4 schedule.

5 Q And how many were there at the time  
6 all together that you were responsible for?

7 A I think seven.

8 Q Seven, okay. Generally, how long did  
9 you spend at each one?

10 A Could've been five minutes. Could've  
11 been three hours.

12 Q So it varied a lot?

13 A Yeah.

14 Q Do you recall specific instances back  
15 then when you saw someone leaving or taking a  
16 lunch hour?

17 A Specifically, I remember once Jose  
18 Suazo taking lunch hour specifically.

19 Q Why does that stand out in your mind?

20 A Because that particular day, I caught  
21 a car in the garage with no ticket and no  
22 sticker, and he wasn't there to explain it to  
23 me.

24 Q You found out?

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1 Q What do you know about that?

2 A That I witnessed workers taking --  
3 leaving the garage to get lunch. Sometimes they  
4 would come back with it and eat in their car, in  
5 the office. I actually reprimanded an employee  
6 for eating in a customer's car once. On a few  
7 occasions, I've witnessed employees leaving --  
8 not being in the garage while I was there and  
9 coming back later, after -- you know, after  
10 their lunch.

11 Q This was during the time that Sam was  
12 handling the payroll?

13 A Yes.

14 Q What was your work schedule at that  
15 time in terms of visiting the various garages?

16 A It varied. Some days I worked from  
17 seven to three. Some days I worked from six to  
18 six. Some days I worked from 4:00 a.m. to  
19 8:00 p.m. It varied.

20 Q How many days a week were you working  
21 at that time?

22 A Six.

23 Q And how many garages did you cover in  
24 a day?

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1 A I had to wait for him to get back to  
2 find out where he was.

3 Q And he told you he was taking lunch?

4 A Yes -- specifically, he said eating.

5 Q Any other specific instances that you  
6 recall?

7 A No -- cancel that. The time that I  
8 reprimanded the employee for eating in a  
9 customer's car.

10 Q What garage was that?

11 A Castle.

12 Q When did that happen, roughly?

13 A Sometime in 2002 or 2003.

14 Q Do you recall who the employee was?

15 A No.

16 Q When Sam was handling the payroll,  
17 what garages did you cover? Which were the ones  
18 that were operating that you covered?

19 A Sage, Bien, Castle. Sam handled Ivy's  
20 payroll for a very short time, so I did visit  
21 Ivy every once in a while. That's it.

22 Q Not 155?

23 A Sam never handled the payroll for 155  
24 or 145.



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Q Who did handle the payroll for those?

A When we first acquired it, Jose Tavares for approximately one or two months was doing the check portion of it. I was doing the cash portion of it. And then the SP Payroll account became active and Jose Tavares was no longer doing any of it, and I was doing all of it.

Q What about 145, was that operating at the time?

A 145 and 155, we took -- SP Payroll acquired them at the same time, or I should say Sam Podolak acquired them at the same time.

Q When you say you handled the cash portion, what did you do?

A Based upon the checks that I received from Jose Tavares, I figured out how much the employees were supposed to get in cash so they would be making the same amount of money that they were making while Jose Tavares was operating the garages.

Q And where were you getting the checks from at that time or the check amounts that you worked with?

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A Yes.

Q Did Jose Tavares provide some kind of schedule with the gross amounts that people were supposed to be paid?

A No.

Q Can you give me an example of how you calculated the cash amounts and what information you used to do it?

A I can give you an example of the information.

Q Okay.

A I don't remember --

Q Okay. Fair enough.

A Jose Tavares provided how much they were supposed to get for specific either shift or total hours, and he provided the checks. The numbers that Jose gave were all net numbers. Until I received the check, the physical check from Jose, I did not know the gross numbers. I did not -- also did not figure out how much cash to put in until I received the checks. I needed to see the net numbers.

Q And this is net of withholding?

A Yes.

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A Jose -- either I went to Jose Tavares's office or Raj went to Jose Tavares's office to pick up the checks. Either I picked them on up or Raj would give them to me.

Q How did you know how much to make up in cash?

A Jose Tavares gave Sam the original amounts that the employees were making. I had to figure out -- mathematically, I somehow figured it out based upon his check that he gave us or me, I should say.

Q Was it something more than arithmetically looking at the difference between the check amount and some number that Jose Tavares provided?

A Under Sam's scheduling and shifts, they didn't work the same amount of hours, so I had -- Jose did not know how much he paid these people hourly. He only knew how much he gave them net. So I had to figure out how much net they had to get in order to be paid the same amount of money.

Q The same as they were being paid by Jose?

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Q Once you knew the net number, how did you do the calculation?

A Addition and subtraction, division and multiplication. Again, I don't remember how exactly I came up with the number, but it wasn't anything more complicated than division, multiplication, addition, subtraction.

Q Did you use a spreadsheet or computer program to do that?

A Yes.

Q Did you keep some kind of record of the computations we're talking about?

A Yes.

Q What records did you keep?

A They were payroll sheets or reports for each location per week.

Q Do those records still exist?

A Yes.

Q Do you know if they've been turned over in this lawsuit?

A Yes.

Q They have?

A Yes.

Q Now, when you took over the payroll,

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1 did employees continue to be paid partly in  
2 cash?

3 A Yes.

4 Q How did you determine what cash  
5 amounts each employee was supposed to get?

6 A It was a net number based on their  
7 hours worked plus one hour for lunch per shift.

8 Q Did Jose tell you why he was paying  
9 employees partly in cash?

10 A No.

11 Q Did you ever ask him?

12 A My contact with Jose Tavares was very  
13 limited.

14 Q Did Sam ever tell you why, before you  
15 took over the payroll, the workers were being  
16 paid partly in cash?

17 A Say that again.

18 Q Did Sam ever tell you why the workers  
19 were being paid partly in cash?

20 A The cash was to make up for their  
21 lunch hour that was deducted from the time  
22 cards.

23 Q Sam told you that?

24 A Yes.

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1 That was in some written form?

2 A Yes.

3 Q How often did Raj or Sam provide that  
4 type of record?

5 A Weekly.

6 Q Weekly?

7 A Yes.

8 Q What did you do with those records  
9 after you had utilized the information?

10 A Depending on the period of time. At  
11 one point it went back to Sam. Another point it  
12 was just scanned into my computer and sits  
13 there.

14 Q Do you know what Sam did with those  
15 records when they went back to him?

16 A I believe he just put them in a box.

17 Q Is that at the Second Avenue location  
18 or somewhere else?

19 A I believe Second Avenue.

20 Q And when you scanned those records  
21 into your computer, what happened to the paper  
22 copies?

23 A I believe I destroyed them.

24 Q We talked about reports you got from  
25

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1 Q To your knowledge, was there a reason  
2 why the lunch hour amounts were not included in  
3 the paychecks?

4 A You would have to ask Sam that.

5 Q You don't know?

6 A No.

7 Q He never told you?

8 A No.

9 Q Did you ever ask him?

10 A No.

11 Q When you took over the payroll, what  
12 was the process whereby paychecks were  
13 generated?

14 A Are you referring to when I started to  
15 do it?

16 Q When you started to do it?

17 A I would get the hours from Raj and/or  
18 Sam.

19 The hours included the one hour per  
20 shift lunch, which I deducted from the check and  
21 then added back in in the form of cash.

22 Q When you got the hours from Raj, what  
23 kind of information, what type of report --  
24 withdrawn.

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1 Raj or Sam. What, if any, records did you  
2 create in the payroll process? Did you generate  
3 lists, spreadsheets?

4 A Yes. Certain locations were all put  
5 on one sheet. Castle, Sage, Bien and Ivy were  
6 put on one sheet. The hours inclusive of the  
7 one hour for lunch, the net pay and the amount  
8 they received in cash were put on a report. At  
9 some point, I don't know when, I added gross pay  
10 to the reports. 145 and 155 had their own  
11 report and Magic has its own report.

12 Q Where is Magic located?

13 A 121 and St. Nick.

14 Q Were you responsible at any time  
15 for -- withdrawn.

16 Have you discussed your testimony or  
17 your prospective testimony for today with anyone  
18 before coming here to the deposition?

19 A No.

20 Q Just so we're clear, I'm asking  
21 whether you discussed your testimony or your  
22 prospective testimony at any time before coming  
23 to the deposition today?

24 A My testimony, no.



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Q Did you do anything to prepare for your deposition today?

A No.

Q Were you responsible for gathering, copying documents for purposes of this lawsuit?

A Yes.

Q Can you tell me what you did and when you did it in that process?

A When would be more difficult. What I did is I instructed Raj to get me all of the time cards. I made copies of any paper reports -- strike that. I didn't make copies. I made copies of some paper reports. I got all of the ADP reports together in an understandable manner, and I made copies of all computer files.

Q Do you know where Raj got the time cards from?

A Wherever he keeps them.

Q When you got them from Raj, did you go through them to see what was there?

A No.

Q The paper reports, what were -- what were those? You said copies of paper reports, so what type of reports did you get?

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A Whatever of the hourly sheets that Raj and/or Sam submitted to me. Raj also submitted -- at some point, Raj also submitted grids as far as what hours people worked a day. I think as far as paper goes, that's all I copied.

Q The hourly sheets, did you have those or Raj gave you those or something else?

A Some of them I had. Some of them Sam had -- I had picked up at 1832 Second Avenue.

Q And the same with the grids, did you have those or did you get them from somewhere else?

A Some of them I had, some of them Raj had.

Q Is there any particular breakdown in terms of which ones you had, which ones Raj had, like in terms of timeframe or garage or something else?

A It would've been timeframe. When I started to scan information -- scan documents into the computer for safekeeping, that's when I -- somewhere in that period of time was where Raj would've stopped maintaining his or Sam

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would've stopped maintaining his.

Q I think you said you didn't review the time cards that you got from Raj?

A That's correct.

Q How about the hourly sheets and the grids that you got from Raj, did you look through them?

A When I was compiling them?

Q When you were compiling them for the lawsuit, yes?

A No -- I attempted to put them in some sort of date order, that's as far as looking through them as I went.

Q Did you succeed?

A Kind of. I would say 90 percent.

Q What about the time cards, did you attempt to organize them in date order or some other way?

MS. MEYERS: Objection.

He said he didn't look through the time cards.

BY MR. BERNSTEIN:

Q So you didn't do anything to reorder or reorganize them?

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A No.

Q Were there any gaps in the hourly sheets or the grids that you noticed when you were going through them?

A I really did not go through the hourly grids, so I don't know whether there were any gaps or not. The sheets, might have been missing one, two. I don't recall.

Q And you also printed out reports that you had scanned, that you previously scanned, that you printed them out; am I understanding that correctly?

A The hourly reports you mean?

Q Any type reports.

A Yes.

Q Those were hourly reports that you scanned at some previous time?

A Hourly reports and the grids.

Q And the grids, okay.

A Yeah.

Q Did you print them in a particular order or did you organize in some fashion after they were printed?

A Actually, I did not print them. I



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just copied the electronic file onto a -- I think I did it on a flash drive, and it was just put with all the other information.

**Q** And the reports that you copied onto a flash drive, do you know how they were ordered, if at all? Were they in date order at the time or by garage or something else?

**A** It depends on how whoever looked at it sorted it. You could've done it in a number of different ways.

**Q** How, if at all, were they ordered on your computer?

**A** By date.

**Q** And what types of reports were these? Were these spreadsheets or something else?

**A** They would be handwritten reports from Raj and/or Sam and the grids.

**Q** And then I think you said you turned over computer files of some sort?

**A** The spreadsheets.

**Q** Those are spreadsheets that you created?

**A** Yes.

**Q** And how were they kept on your

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computer? Are they in some sort of date order or something else? Are they in files by garages or something else?

**A** Filed by garage in date order.

**Q** When you turned over the -- well, I think I already asked you that.

When you turned over the reports that had been scanned -- and I understand you did that by putting them onto a flash drive?

**A** Yes.

**Q** Did you notice if there were any reports that were missing, either for a date period or garage or something else?

**A** No, I didn't even look.

**Q** Okay. And how about the computer files, the spreadsheets? Do you know if there were any gaps in the ones that you turned over?

**A** There were one or two that I accidentally corrupted.

**Q** One or two out of how many?

**A** Out of 2003 to 2006 or 2007, one per week per garage. So whatever that multiplies out to.

**Q** Okay. Do you know if there are any

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records that demonstrate or -- from which you can tell how many cars are in a particular garage at any particular time?

**A** There are monthly reports that are done -- they're supposed to be done twice a day. At about eight in the morning and somewhere around 11 or 12 at night -- I'm sorry, at three in the afternoon and 11 or 12 at night. Again, there are supposed to be two of them. One at somewhere around three and one somewhere around midnight. There are no reports available to figure out how many transient cars are in at any given time.

**Q** So those are monthly customer reports, in other words?

**A** It depends on which garage we're talking about. Some garages, a lot less complicated reports than others.

**Q** What types of complications go into a report like that?

**A** An example is Bien had -- just had a sheet, a numbered sheet, one through, I think 100 or maybe 200. No information on it at all. All the attendant had to do was walk around the

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garage. If he saw car number one, he checked off the box in one. If he saw 50, he checked off the box in 50. Ivy had the report that had the specific car on it, that theoretically the attendant was supposed to check that the car that was on the list was the same as the car in the garage.

**Q** Were you involved or have you been involved at all in assigning workers to particular facilities?

**A** No.

**Q** After you took over the payroll, did you continue to visit the garages?

**A** Only when there were problems.

**Q** About how often was that, generally?

**A** Once a month. Except for 155th Street. I went six days a week, mainly to meet Raj.

**Q** How long did you spend at 155th each day?

**A** Could've been two minutes; could've been an hour.

**Q** It varied a lot?

**A** Yeah.

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Q Did you ever meet Miguel Alcatara?

A Yes.

Q When did you first meet him?

A Shortly after we took 145th Street and 155th Street from Jose Tavares.

Q Do you recall specifically anything that was said between you at that time?

A Very little. He speaks almost no English.

Q And how were you introduced to him?

A I don't remember.

Q Have you spoken with him since then?

A Yes.

Q When was that?

A We have an outstanding Workers' Comp. case with him.

Q When did you last speak with him?

A A year.

Q A year ago?

A Maybe.

Q Have you spoken with him in between when you first met him and the Workers' Comp. case?

A You mean while he was working?

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A At the time, I maintained the monthly list at Ivy Parking; and if I had any questions about it, I called him.

Q Was that while you were a supervisor?

A No. Also while I was doing payroll, I maintained the list for Ivy Parking. It was one of the only garages -- it was the only garage in the Bronx that I maintained the list for.

Q What list was that?

A The monthly list.

Q The monthly list that you mentioned a few minutes ago?

A Yes.

Q Monthly customers, in other words?

A Yes.

Q Do you recall ever speaking with Edison Alvarez on any other subject?

A Occasionally, he would question his pay. Occasionally, he would question his -- the amount of cash that he received.

Q Is this when you were a supervisor or when you were handling the payroll or something else?

A Both.

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Q While he was working?

A Hellix. Buenos dias, buenas noches.

Q Just casual conversation?

A Yes.

Q How about after he stopped working?

A Not until the Workers' Comp. case.

Q Do you know who Edison Alvarez is?

A Yes.

Q Have you met or spoken with him in person?

A Yes.

Q When was that?

A Various times throughout his period of employment.

Q Was that at one or more than one of the garages that we're concerned with?

A It was definitely at Ivy Parking.

Q About how many times have you spoken with Edison Alvarez?

A Over the period of his employment?

Q Yeah.

A Thirty, 40, 50 maybe.

Q What generally did you speak with him about?

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Q Where did these conversations take place?

A Probably the phone.

Q Telephone?

A Yes.

Q About how many times has that happened?

A Not very often, because Sam decided what he would get paid so any questions referring to his pay were referred to Sam.

Q Is that something that you told him, you should speak to Sam?

A Yes.

Q Did you ever learn whether he did speak to Sam?

A No.

Q Did Sam ever speak with you about Mr. Alvarez's complaints?

A He, on a couple of occasions asked me how much Alvarez's check was and how much cash he got and how many hours he worked. I assumed that they were because Sam needed information to respond to Alvarez's inquiries.

Q Did Sam ever tell you how he responded



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1 to the -- to Mr. Alvarez's questions?

2 A No. The only conversations I had with  
3 Sam regarding Alvarez is Sam told me Alvarez  
4 couldn't make more than 40 hours on a check due  
5 to some sort of a personal issue and that he was  
6 to get 40 hours on a check and everything else  
7 in cash.

8 Q Was there a limit to the number of  
9 hours that Mr. Alvarez could work?

10 A That, I don't know.

11 Q When you say a personal issue, I think  
12 you said?

13 A Yeah, I think it had something to do  
14 with his apartment. I'm not sure.

15 Q Do you have any more information about  
16 why Mr. Alvarez was limited in the way that you  
17 said he was?

18 A No.

19 Q After you spoke with Sam, did you make  
20 some changes in the amount of cash for  
21 Mr. Alvarez?

22 A No.

23 Q You gave him the amount that Sam said  
24 to give him?

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1 Q How about Patricio Gonzalez, do you  
2 know who that is?

3 A I know the name.

4 Q You never met or spoke with him?

5 A I never met him. I am aware of  
6 paperwork regarding him and this suit where he  
7 had come to some sort of a settlement previous  
8 to this suit.

9 Q Do you know who Victor Gonzalez is?

10 A An employee.

11 Q Have you ever met or spoken with him?

12 A No.

13 Q How about Luis Luna?

14 A Employee.

15 Q Have you ever met or spoken with him?

16 A No.

17 Q Have you ever met or spoken with  
18 Angelo Pena?

19 A Yes.

20 Q Once? More than once?

21 A More than one occasion.

22 Q Can you put a timeframe on those  
23 meetings?

24 A No.

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1 A Yes.

2 Q When was the last time, if you can  
3 recall, that Mr. Alvarez complained to you about  
4 the amount of his pay?

5 A I don't remember.

6 Q Was it anytime in the last year?

7 A No.

8 Q Do you know Jose Diroche?

9 A I know the name.

10 Q Did you ever meet him?

11 A Not personally, no.

12 Q Have you ever spoken with him?

13 A No.

14 Q You recognize the name as one of the  
15 employees; is that right?

16 A I recognize him both as an employee  
17 and a member of this proceeding.

18 Q But you knew who he was before the  
19 lawsuit?

20 A I knew the name.

21 Q You knew the name?

22 A Yes.

23 Q Before the lawsuit got started?

24 A Yes.

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1 Q Was that at a garage or somewhere  
2 else?

3 A At a garage.

4 Q Do you recall which one?

5 A 1155, maybe 145.

6 Q What generally was discussed between  
7 you and Mr. Pena?

8 A Nothing of substance, just hello and  
9 goodbye.

10 Q Do you know who Miguel Rojas is?

11 A Yes.

12 Q Have you ever met or spoken with him?

13 A I don't know whether I've ever met  
14 him. I just know the name. I could've met him  
15 in a garage, I don't know.

16 Q How about Rolando Rojas, do you know  
17 who he is?

18 A I know who he is. I've met him; but  
19 if I met him again, I wouldn't know it was him.

20 Q What do you recall about meeting him?

21 A Just cordial. Again, he speaks  
22 limited English.

23 Q Franklin Santana, do you know who he  
24 is?



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A Yes.

Q Have you ever met or spoken with him in person?

A No.

Q Christian Santos, do you know who that is?

A Yes.

Q He is also an employee?

A Was.

Q Have you ever met or spoken with him in person?

A No.

Q How about Jose Reyes, do you know who that is?

A Sounds like he was an employee; but off the top of my head, I don't know.

MS. MEYERS: Rich, I think that's not his first name.

Q Jose De Arce Reyes?

A Former employee.

Q Have you ever met or spoken with him in person?

A No.

MR. BERNSTEIN: Let's take a short

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break here.

(Whereupon, a break was taken.)

BY MR. BERNSTEIN:

Q At what point did you start working with the information that you got from Jose Tavares? I think you said you got a net number, and then you worked out a cash number based on that in some way. Do I understand that correctly?

A Jose Tavares paid some portion in cash as well as check.

Q Okay.

A Whatever date that we started managing 145 and 155 is the date. I want to say May of 2003, but I'm not sure.

Q But whatever date that was, that's when you started utilizing information from Jose Tavares in terms of a net number that you worked into a cash number in some way?

A Me?

Q Yes. Is that something you did?

A Yes.

Q And did you continue to go through that process after you took over the payroll?

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A Once the ADP program was up and running, we discontinued getting checks from Jose Tavares.

Q But in terms of figuring out the cash amount, how did you do that once you took over the payroll?

A We continued to pay the employees the same -- in the same manner that Jose Tavares did.

Q So you began with a net amount and then computed a cash amount in some way based on that?

A We began with a net amount and a net check -- a net check to find out how much cash needed to be added to come up to the original net amount.

Q Explain to me what you mean by the original net amount.

A Jose Tavares was paying his employees a net amount. I don't remember what that number is. But he paid a net amount. So rather than to have disgruntled employees, we continued to follow Jose's system. I knew how much net they were supposed to get for a specific amount of

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hours.

Q I see.

A So in order to figure out the gross numbers never came into play other than to make sure that they got paid minimum wage for their time worked. Minimum wage plus overtime.

Q And the net amount for a certain amount of hours is net of payroll withholding?

A It's what they actually walked home with.

Q Cash plus check?

A Cash plus check.

Q I see. Do you know if the amount you got from Jose Tavares varied if the amount of hours that an employee worked varied?

A From Jose Tavares, I have no idea what he did if someone worked less hours than they were scheduled.

Q How about once you started taking over the payroll, you still started with a net amount for a certain number of hours?

A If they worked -- they got paid for the amount of hours they worked plus one hour per shift for lunch.

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Q When you say they got paid for the number of hours they worked plus, did the amount that they were paid for hours worked vary when the number of hours varied?

A Yes.

Q Higher number if the number of hours was higher and so forth?

A Yes.

Q Has that system changed in any way since you started -- since you took over the payroll back in 2003?

A Yes.

Q How has it changed?

A Currently, we do not pay many people in cash and the hours that they worked inclusive of the lunch hour is in the check.

Q Are there any people who are still paid in cash?

A A few.

Q Which ones are they?

A Forgive me if I don't say everybody.

Q Well, I don't know if it's just a random group of names or there's -- it's a particular garage or something else?

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A It's usual the same employees every week. Occasionally it changes; but for the most part, it's the same.

Q What accounts for the fact that those people are still on the previous system?

A Sam's decision.

Q Did Sam ever explain to you his basis for keeping them on the same system?

A It's not the same system.

Q Okay.

A I'm just going to use employee A worked 55 hours plus five hours for lunch.

Q Okay.

A Employee A got a check for 40 hours plus 20 overtime plus some cash. It had nothing to do with his lunch or how much he got. He would just -- Sam decided that he wanted to give him extra. That's current.

Q Have there been any other changes besides what you just told me?

A Other than the minimum wage changes, no.

Q So if I understand correctly, there are now some employees that are paid exclusively

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by check?

A Most employees are paid exclusively by checks.

Q And when did that begin to be done?

A I think sometime in 2006.

Q Who made the decision to do that?

A Sam.

Q What did he tell you about that?

A He said that he wanted -- he no longer wanted to pay cash to most of the employees to change the way people -- change the way checks were being cut to include hours worked and lunch.

Q Did he tell you why he wanted to make that change?

A No.

Q Did you ask him?

A Yeah.

Q What did he say about that?

A Didn't get an answer.

Q He didn't say anything?

A He went onto something else, and I never returned to the question.

Q For the employees that are now paid

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exclusively by check, what is the process whereby their paycheck is generated?

A From beginning to end?

Q Yes. Generally describe the process.

A The process is generally the same. Raj or Sam faxes me a handwritten sheet that has their hours on it, either by location or group of locations, and I enter into ADP's payroll system the amount of hours, 40 hours plus whatever additional. Next day I get a check, and somehow I get it to Raj.

Q Let's look at Exhibit S. (Handing.) Paragraph can you tell me what time of record that is? Is that something you recognize?

A Yes.

Q What is it?

A It's generated from ADP PC Payroll for Windows. It is an earnings statement from the beginning of when Angelo Pena -- let me back up a little. It is an itemization of every check that Angelo Pena received from SP Payroll. Includes gross pay and net pay and week ending and so forth.

Q Is it a type of record that SP Payroll



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keeps in the normal course of business or was it created for the lawsuit or something else?

A This particular record was created for the lawsuit.

Q Is it a summary of amounts that are on the actual paystubs?

A More information appears on the paystubs than does in this report.

Q But it does itemize the gross and net?

A That's correct.

Q Then if we look at Exhibit 6.

(Handing.)

Is that a paystub for Mr. Pena or a copy?

A It's a reproduction of a paystub generated by PC Payroll for Windows.

Q This says it's for pay date August 3rd, 2007, period ending July 29th, '07. Do you see that?

A Yes.

Q Do you know if at that time Mr. Pena was being paid exclusively by check?

A Yes.

Q He was?

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Q Do you know if any of the workers were ever asked to give a receipt for the cash?

A Let me actually back up on that one. Edison Alvarez actually gave Sam some form of acknowledgment that he received cash.

Q Aside from that, are you aware of any kind of cash or acknowledgment that workers gave or were asked to give?

A No.

Q When you were supervisor, did employees who worked the same number of hours in a week get the same amount of cash? For example, if there were two employees that worked, say, 72 hours, they both worked 72 hours in a given week, did they get the same amount of cash?

A I don't know. I wasn't doing payroll at that time.

Q What about when you started doing payroll?

A It depended. Since their pays were based on net, it depended on how many deductions. If their nets were the same, their pay was the same.

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A Yes.

Q When you were a supervisor, did you personally hand out the pay to the workers?

A Rare occasions, but yes.

Q When you were a supervisor, who normally did that?

A Raj.

Q On what types of occasions did you do that? What were the rare occasions, circumstances?

A If Raj was sick, if Raj was on vacation or if I just happened to be going there for another reason.

Q While you were supervisor, did the workers -- did any of the workers give a written receipt for the cash?

A Not that I'm aware of, no.

Q Do you know if Raj ever gotten written receipts for cash?

A Not that I'm aware of.

Q And how about after you took over the payroll, did workers ever provide written receipts for cash that they got?

A Not that I'm aware of.

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Q As part of your job, do you look at or go through time cards, the time cards themselves?

MS. MEYERS: Objection. When?

MR. BERNSTEIN: At any time.

A It doesn't really matter, no. Let me back up. I occasionally glance at them. If I'm at a location, I might just glance just to make sure they're being used.

Q When you say to make sure they're being used, you mean that the employees --

A Are punching in and out.

Q Have you found times when employees are not punching in and out every time they're supposed to?

A Occasionally. They also refused to punch in and out for lunch when we attempted to get them to do that.

Q Okay. We'll get to that.

A Okay.

Q Occasionally, if I understand you correctly, there are missing punch-ins or punch-outs that you've seen?

A Yes.



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Q I should say time cards that you've seen with a missing punch-in or punch-out time?

A Yes.

Q When the punch-in or punch out-time is missing, how, if at all, are the employees' hours figured for that day?

A It was up to Raj. Raj was the one that knew when they were coming and going. He was the one that determined what time they got there and what time they left.

Q Now, you said that employees refused to punch in and out for a lunch break; am I correct?

A Refused might have been a wrong word.

Q Okay. They didn't do it?

A Unable to do it might be a better choice of words.

Q Tell me what you remember about that.

A At some point, I had requested Raj to get the employees to punch in and out whenever they left the garage.

Q Not just for lunch but whatever?

A My choice of words was "whatever," but it meant lunch, and Raj understood that. And we

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Q Was that something you asked Raj to do?

A Yes.

Q When did that happen?

A It was more than one request, and they were made sometime in the early part -- early and mid part of 2004.

Q And what caused you to ask Raj to do that?

A The time cards were not reflecting that they were going out, so I needed -- I needed that to happen.

Q And how do you know that the time cards were not reflecting that?

A Raj told me.

Q What did he tell you about that?

A That after the first time I had asked him to get them to punch in and out for when they left the garage, I asked him if they were doing it, he said no. After the second time I asked him to do it, I asked him again, the same question, he said no.

Q Do you know if Raj did anything besides asking the workers to punch in and out

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just couldn't -- could not get them to do it. They either forgot, they didn't want to do it; for whatever reason, they did not do it.

Q Do you recall when you --

MR. BERNSTEIN: Can you repeat the last answer and question.

(Whereupon, the requested portion was read back by the court reporter: Q, tell me what you remember about that? A, at some point I had requested Raj to get the employees to punch in and out whenever they left the garage. Q, Not just for lunch but whatever? A, My choice of words was 'whatever,' but it meant lunch, and Raj understood that. And we just couldn't -- could not get them to do it. They either forgot, they didn't want to do it; for whatever reason, they did not do it.)

BY MR. BERNSTEIN:

Q How were workers told to punch in and out for lunch?

A Verbally.

Q By you or Raj?

A By Raj.

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for lunch? Did he take any other steps to see to it that they did that?

A I don't know.

Q Did you ask him to take any other steps besides telling the workers to punch in and out for lunch?

A I did tell him that if they don't do it, they're going to receive reprimands for it. I don't know whether he told them that or not.

Q Do you know if anyone was ever reprimanded for not punching in and out for lunch?

A No official letter was written.

Q How about unofficially?

A It wouldn't have come from me, it would've come from Raj.

Q So you don't know one way or the other?

A No.

Q Do you know if there are any time cards that show a worker punching in or out for a lunch hour?

A I don't know.

Q Let's look at Exhibit 9. (Handing.)

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I think my question is, what type of record are we looking at here?

A These documents are previous to when I was doing payroll, but are similar to the ones that I would receive from Raj and/or Sam, or some of them are similar.

Q Do you have one that you can tell me is similar?

A The second page. The one dated May 8th, '03.

Q Okay.

A It's similar to what I currently get.

Q Similar in that there's a list of employees for various garages with days and hours worked?

A Correct.

Q And then the ones you now get also have numbers added onto them by Sam?

A Some do, some don't.

Q Which ones do and which ones don't? Does it vary --

A It varies.

Q -- by garage or something else?

A No. It depends on whether Sam happens

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Q Do you know on what basis he does that or what basis you do it when you do it?

A If an employee worked 12 hours five days a week, I would basically do eight plus four for every 12 hours, and it would, you know -- it would kind of add up to 40 plus or whatever. Forty plus 20.

Q Let's look at Exhibit 12. (Handing.) Quickly, are there reports in here from the time when you were handling the payroll?

A Yes.

Q Can you give me an example?

A Let me back up. At this -- let's just go with the first page. 8-25-03 to 9-1-03, I was only handling the check portion of the payroll.

Q So in that instance, how did you utilize the information from this report?

A In this particular instance?

Q Yes.

A Let's take in Blen, Felix, he got on his check 40 hours regular, 26 hours overtime at whatever the minimum wage rate was.

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to be in time to write these, like eight plus four. If he happens in time to write it in, then he does that. If he's not in in time, then I have to do it on my own.

Q How do you do it on your own?

A It's more or less arbitrary. This eight plus four means he worked 12 hours. At this particular garage, the allotment of regular time -- we're talking about Persio. At this particular garage, the allotment is eight regular hours, four overtime hours at this particular garage. And then somewhere on there there's probably 32 hours plus whatever extra overtime you worked underneath it. At Sage, he worked 32 plus 16, which brings his 40 regular, 20 overtime.

Q When you say allotment, I'm not sure what you mean by that.

A It really has nothing to do with the employee. It's how the labor cost is distributed from one garage to the other because he worked in two separate garages.

Q Who makes that distribution?

A In this particular case, Sam did.

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Q Is there an example in here of when you were handling both the check and the cash portion?

A Let's go to the last one, since it's probably the last date.

Q The last one?

A Let me see what that date is. We can't read that date, so let's go to the one before the last one.

Q Okay.

A I believe I was handling both portions at this point.

Q Okay. And in that instance, how did you utilize the information that you were given?

A In this particular one, Sam figured out the distribution of regular and overtime pays. Let's take Sammy, for instance.

Q The first one?

A The first one. Forty hours regular, 26 overtime is what his check was. And I'm guessing that at some point I put cash in his envelope as well.

Q And what method did you use to arrive at the cash amount?



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A I added in six hours for lunch because six days, six hours.

Q And we know it's six because -- well, it says six days?

A It says six.

Q And 72 hours?

A Yeah.

Q And then Sam wrote 40 plus 26?

A Yes.

Q Meaning the check amount was for 40 regular and 26 overtime hours?

A Yek.

Q Let's look at Exhibit 13. (Handing.)

Are these pages, or most of them, examples of the grid that you said you got from Raj at times?

A Yes. There are also additional pages in here with the hours that I would get from Raj and/or Sam. In this particular case, I did the distribution of regular and overtime hours on my own.

Q What's the date on that?

MS. MEYERS: Page number?

THE WITNESS: Looks like 17.

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overtime.

Q How does the grid format show the number of hours per shift that people were working?

A Well, let's take the first page, Bien.

Q Sure.

A Sammy Gerardo, Monday, eight hours, Tuesday, eight hours and so on. It specifically says in this particular day how many hours they worked in that day.

Q I see. That's a piece of information that's not on the list form; is that right?

A That's correct.

Q How did having the information in the grid help you to control overtime?

A It just made it easier for me to see where people were working 12 hours a day or 10 hours a day or eight hours a day, and it helped me, you know -- it helped me advise Sam that we need to cut down on overtime costs. And if it means to hire an extra man to work less overtime, that's what it means doing.

Q Next let's look at Exhibit 14. (Handing.)

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BY MR. BERNSTEIN:

Q Is there a date on the page you just looked at?

A 1-14 to 1-20-2008, and it's the sixth page.

Q So Raj sometimes gave you information in a grid form and sometimes in the list form that we've looked at; is that right?

A Currently I get them in both grid form and list form.

Q For the same workers or --

A Yes.

Q When did Raj start providing the grid type format?

A I believe in 2007, but I'm not sure.

Q And how did it come about that he started doing that? Was it his idea or somebody else's to do it?

A No, it was my idea.

Q And what was your basis for asking him to do that?

A I needed to see how many hours per shift the employees were working, because at this time we were trying to control our

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Do you recognize that -- I'm just focusing on the first page. Do you recognize that document --

A Yes.

Q -- or type of document?

A Yes.

Q What is it?

A It's a document that I generated to figure out how much cash to give the employees.

Q Can you tell me what information is in the numerical columns? I see there's a list of garages by the list of workers' names.

A Okay.

Q You have total net pay and so forth.

A So total net pay is the total net they're supposed to be receiving for the hours worked plus the lunch hour in cash and check. Total hours worked is the total hours worked inclusive of the lunch hour. The net check is how much the check is net for this location. 17.21 is the cash amount. Seventeen, it's rounded off.

Q Let's go back to total net pay.

A Uh-huh.

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**Q** In this case this is Persio. \$126. Where did that number come from?

**A** It's 24 times whatever it figures out -- the amount that figures out to net. It's not a gross number. So its got to figure out to a net number. So it's 24 -- if you divide 126 by 24, you'll get what it is.

**Q** If we divide 126 by 24, we get a number that's five something?

**A** Right.

**Q** But where does the 126 come from?

**A** Twenty-four times whatever that number is. Twenty-four times 5.25 is 126.

**Q** So where does the 5.25 come from?

**A** There was the net -- that's how I figured out what they were supposed to get net based on --

**Q** But how did you know to use 5.25? It may be very elementary here?

**A** No, I understand what you're saying. I'm not 100 percent sure. This was four years ago; and after I did it the first time, I never did it again. I believe we took whatever Jose Tavares was paying them net, divided it by

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go into that computation?

**A** Which computation.

**Q** Well, when you said based on -- I think you said based on hours worked and gross?

**A** I don't know which computation you're talking about. Overtime went into their gross check.

**Q** Okay.

**A** So if they worked -- let's just take an example here. In this case, Persio at Bien worked 24 hours.

**Q** And that would come from the time cards?

**A** Well, I would get it from the sheets that we looked at earlier.

**Q** Raj got it from the time cards and gave it to you; is that right?

**A** That's correct.

**Q** 24 hours?

**A** 24 hours. So some variation of 24 hours was regular pay and some variation -- I'm sorry, this 24 hours is inclusive of the hour for lunch.

**Q** Okay.

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whatever amount of hours they worked, inclusive of the lunch hour, and that's where the number came from.

**Q** That's where the 5.25 came from?

**A** Right. Which equates to something like six something gross.

**Q** How do you get from the net to the gross?

**A** It didn't matter. It didn't matter because the employees didn't know -- they didn't care about their gross. They only cared about what they walked home with. For payroll purposes, I'm sorry, it didn't matter.

**Q** I understand. But you still had to have a method to go from net to gross?

**A** No. I didn't need -- I only needed a method to get from gross to net. Their gross was very simple. Gross was based on minimum wage, hours worked.

**Q** I see. Minimum wage and hours worked?

**A** Minimum wage meaning 40 regular and whatever 1.5 times the minimum wage rate at whatever time it was. I believe 2004 was 5.15.

**Q** Did overtime -- did the overtime rate

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**A** So some variation of 22 hours went to regular pay and some variation -- you know, whatever variation went to overtime. The total net check attributed to Bien was \$108.79. I needed to get him to 126 so he netted what he wanted to. You know, what he expected.

**Q** Okay.

**A** Which was 126 minus 108.79 is 17.21. Within a penny or so.

**Q** So the cash number is total net pay minus net check?

**A** Correct.

**Q** Where does the net check number come from?

**A** I got it from a report from ADP, but I could've just as easily waited for the check and looked at the check.

**Q** I see. I see.

**A** Let me back up on that. I could not have gotten it from looking at the report -- not looking at the check. I would've gotten it from a labor distribution report that ADP generates after I send them the information.

**Q** Is the net check number the net pay



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that's actually the amount of the check that Persio got?

A Not -- when an employee works at two separate locations, for accounting reasons, not for payroll reasons, but for accounting reasons, you want to attribute the proper amount to the proper location. So each location pays its fair portion of the payroll.

Q Of course.

A So if you look at it, somewhere else on here there's Persio, 108.79 plus 101.96 --

Q This is at Sage, right?

A Yes. Which is what he actually saw and deposited into his account or whatever he did with it.

Q It would be the 108 plus the 101?

A Yes.

Q I see. And that's the number that you got from ADP?

A Correct.

Q Why don't we take one where someone worked at just one location.

A Okay. Let's make it easy and say Franklin Santana.

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Q Right. He's the last one at Rien?

A Right.

Q In order to arrive at the amount of cash that he's supposed to get, that's the purpose of this worksheet: is that right?

A It's the main purpose of the worksheet. The other purpose is also accounting-wise it distributes where the funds are supposed to be coming from.

Q Okay. All right. In terms of getting to the cash number for Franklin Santana, which is \$54 -- 55?

A 54.56.

Q Right. How would you go about doing that? And I'm sorry to belabor it, but I want to make sure I understand.

A Again, 315 divided by 60 would've given me the net hourly rate.

Q Again, that's 5.25, as it happens?

A Okay. So now we've got the hourly rate. Sixty hours times 5.25, that's 315. That's how much he's got to get for working 55 hours plus one hour each shift for lunch, which I'm guessing here is five shifts at 60 hours.

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Q Sixty under hours looks to you like -- like it was probably 12 hours five times a week?

A Yes. That would've been confirmed by those other reports we looked at earlier.

Q The number of hours?

A Number of shifts, because it says the days.

Q The number of shifts?

A The other report would say for Franklin Santana -- without looking at it, I know what it's going to say. It's going to say five days, 60 hours.

Q Okay. Good.

A So you take 260.44, which was his net check.

Q That's a number you got from ADP?

A Yes. Subtract 260.44 from 315, and you get 54.56. In this particular case, it got rounded up to 55.

Q I see that. And where does the 315 come from?

A Sixty times 5.25.

Q And where does the 5.25 come from?

A That was his net.

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Q Rate?

A That's how I came up with the net rate --

Q Where did you get the 5.25 originally from?

A Originally from --

Q Jose?

A Yes.

Q I see.

A So in order for me to be able to figure this out in an efficient manner, I had to break it down hourly. Otherwise, I would have to manually do these calculations every single time. I did not want to do that. It would take too long to do that.

Q Right.

A What he got paid for time worked was 5.15 an hour plus whatever applicable hours in overtime were. It happened that dividing the net worked out within a few cents every week. So I didn't have to adjust anything. And the additional five hours is basically lunch.

Q So the 5.25, is that a number that you used for each of the workers listed here?

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A I don't remember.

Q We could figure it out?

A We could figure it out. You'd have to base it on -- I based it on whatever I was given from Jose Tavares. Let me stress, he did not personally give it to me. It was just given to me, I don't remember how. Maybe his wife might have given it to me.

Q Was it in a list or verbally or something else?

A Some kind of scribbled list, which wasn't easy to decipher. I do remember that. Anyway, we took the nets based on whatever he was paying them. So in other words, we wanted it to be seamless.

Q So the 5.25 number is a number that he gave you or that you got --

A No. The 5.25 number is a number I figured out. If somebody worked -- if he told me somebody worked 12 hours and they received X amount of dollars net, I just divided their -- that number by 12 and figured out how much they were getting net.

Q Did you have a net number for 12

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would have done it.

Q Well, 72 hours is probably six days, isn't it?

A Yes. In this particular case, I happen to know it is, and we can confirm it if we find the proper sheet.

Q So looking at 72, we know we're going to take some number and divide it by six; is that right?

A We probably took 390.24 and divided it by 72.

Q And the 390.24 was a number that was provided by Jose Tavares?

A Actually, it was probably 390, and I probably rounded it to make things easier for me.

Q But the three-point number was provided by Jose?

A The 390 net number was always provided by Jose. Not on this particular day. You understand that, right?

Q Right.

A At some point, when we had taken over the locations from him,

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hours?

A No.

Q So I'm not sure how you could do that computation.

A Whatever his net number was, I divided it by five, and that's how much the net number was for 12 hours.

Q So the net number that you started with was for the week?

A A week, yes.

Q Divided by five is going to give you a -- in this case, a 12-hour number?

A Correct.

Q In another case, let's take Enrique Lara under Castle. He's got 72 hours?

A Okay. That 72 hours is inclusive of his one hour per day.

Q So you would be dividing something by six in his case?

A Assuming that that's the information that I got from Jose's list. If Jose's list said that this net is for six days, then that's how I would have done it. If Jose's list said this net was for five days, then that's how I

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Q Was that kind of a standing number for each employee?

A What the 390.24?

Q Yes, the net number.

A No. The net number -- I mean, some were the same, some were different. It depended on how many hours they worked.

Q I mean, for each employee he gave you that number once?

A A net number.

Q A number that you were supposed to use from week to week?

A Yes.

Q That's what I meant.

Let's also look at Exhibit 15.  
(Handing.)

And when you've had a chance to look at it, my question is what type of record are we looking at here?

A It's a weekly payroll report for Bien, Castle and Sage.

Q That's the first page. The first page is that. There are some other pages that have Jesse and J&I, if you look towards the end.



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A Right.

Q Why don't we just focus on the first page here.

A Okay.

Q Is it a report that you prepared?

A Yes.

Q Sometime around September 10th of '06?

A Yes.

Q And what type of report is this?

A It's the same as the report we were just discussing. It gives total net pay. The actual net --

Q It's got an additional column, doesn't it?

A Yeah. It gives the total hours worked gross check, net check. I'm not sure what this net pay column is. Previous to the minimum wage going up, that's what their net pay would've been.

Q I see.

A So it's just a reference column for me. In this particular case, no additional cash was given and this is at a period of time when

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we stopped paying for employees' lunch.

Q When did you stop paying for the employees' lunch?

A It was sometime in 2006, most probably very early, when I believe minimum wage went up at this point to 6.75.

Q Is that -- and who made the decision to stop paying for employees' lunch?

A Sam.

Q Is that something he told you?

A Yes.

Q Did he tell you why he made that decision?

A No.

Q Did you ever ask him?

A No.

Q Did anyone else ever tell you why Sam made that decision?

A No.

Q If we look at Persio there, total hours worked 36, that's a number that you got from the report from Raj or the grid or something like that?

A The report.

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Q The report?

A Yes. That's inclusive of their lunch hour.

Q Then the gross check, did that come from ADP or actually --

A Do you want to pick Franklin Santana, since it's one location?

Q Yes. Forget Persio. Let's look at Franklin Santana. Sixty hours?

A Yeah. That's 55 that he worked and five lunch.

Q Because we know that 60 hours is five days?

A Right.

Q And that's something you could get from Raj's report?

A Yes.

Q So we're going to divide something by five, is that the next step here?

A No, here, there is no other step because we are no longer adding anything in cash. They're getting paid straight minimum wage, whatever applicable overtime and that's it.

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Q Gross check, that comes from ADP?

A In this particular case, it would appear on ADP reports plus it would appear on the employee's paystub.

Q And net check, same thing?

A Same thing. It would appear on ADP reports, and it would appear on the employee's actual check and paystub.

Q Then what about the 364 number, where does that come from, total net pay?

A That's how much his total net pay was.

Q It's the same as the net check?

A Yes.

Q Except for --

A Give or take a couple of cents. The total net pay for this particular report -- at this particular time, the total net pay and net pay reports are functions of accounting, not payroll. Not figuring out how much to give anybody in cash. Because at this particular time, with the exception of two people, there was no cash.

Q What was the purpose of creating this report, since you don't need to figure out the

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cash numbers at this point?

A It just carried over. I just never changed the format of the report because there was no reason to. But to allocate funds properly, we still needed to know the total net, total net pay.

Q And that's why you have total columns for each garage?

A Yes.

Q Now, the two exceptions, are those the ones that are shaded in?

A No.

Q What were the exceptions?

A Juan Lorenzo and Jose Suazo.

Q Where are they?

A Sage.

Q Why are they getting cash amounts?

A Sam likes them.

Q A simple answer to a simple question. So Sam told you what amount to give them?

A Yes.

Q What about the ones that are shaded in, that's a different situation?

A I believe this is an error, that the

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shading is there because it bears no relevance to anything. Angelo Pena always got paid straight.

Q Down at the bottom, it says shaded employees are gross. Does that -- what does that mean?

A One or two periods of time there were a couple of employees that their pay was not based on net, it was based on gross. And this particular week none of those employees actually worked at these garages.

Q So these two -- actually, it's Angelo Pena at two places?

A No, my error. When Angelo Pena was hired, he was hired at a gross number. So that's why his are shaded to reflect that he is -- we did not inherit him from Jose.

Q So when he was hired -- when you say he was hired at a gross number, can you explain to me --

A Whatever minimum wage was.

MR. BERNSTEIN: I need to take a short lunch break.

(Whereupon, a lunch break was taken.)

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MR. BERNSTEIN: Back on the record.

BY MR. BERNSTEIN:

Q Mr. Saperstein, you understand you're still under oath?

A Yes.

Q Before Sam decided to stop paying for lunch hour -- I think you said he decided at some point to stop paying the employees for lunch hour; is that right?

A Yes.

Q Up to that point, the employees were being paid in cash for lunch hour?

A Yes.

Q Once the employees were no longer being paid in cash for their lunch hour, was there some way they were paid for lunch hour? Was it taken into account in their checks at that point?

A No. It was taken into account in their checks starting in 2007. Let me just clarify that.

Q When did that begin?

A January, February 07.

Q And how was that done?

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A It was just straight in their check.

Q So there was a period of time when it was not in their check, like in '06?

A In -- when minimum wage went up to, I believe, 6.75, which was 06, I believe, that's when Sam decided not to supplement their checks with cash for lunch.

Q And at that point -- okay. And then in '07 he started supplementing their checks again?

A We just -- it's not that we started supplementing their checks. They just received -- the hours that they were -- not the hours. If they worked a five-day work week, and they worked 55 hours. We just added the five extra hours for lunch into the total, and it was paid in the check. So they would've gotten 40 plus 20.

Q So there was no subtraction being made?

A That's correct.

Q When the employees were being paid for lunch in cash, do you know if they were told that the cash was for their lunch hour?



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A I don't know.

Q I think you said starting in '07, they were paid through their checks for lunch hour?

A Correct.

Q Do you know if any of the workers were told at that point that there was some amount in their checks for lunch hour?

A I don't know.

Q Let's look at Exhibit 10. (Handing.)

Do you recognize those pages?

A Yes.

Q What are they?

A They're notification -- they're notification and clarifications so the employees understood that they had to -- that they were going to take a break at their own discretion and that it would be deducted from their -- from their time card.

Q Is this a notice that you prepared?

A Yes.

Q And did you have someone translate it into Spanish for the second paragraph?

A Yes.

Q Who made the translations for you?

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Q Who made the decision to give the employees this type of notice?

A It was my idea to give the employees the notice and Sam okayed it.

Q Had you been told at any time up to when you prepared this notice that employees were not taking meal breaks?

A No.

Q Did anyone ever complain to you or did you learn of any complaints after this point that employees were not taking meal breaks?

A No.

Q Did it ever come to your attention that employees, for whatever reason, were starting to work and working for a period of time before they punched in?

A I'm sorry?

Q Did you ever learn that it was happening, did anyone ever tell you that employees were not punching in right when they started working? That they were asked to wait and punch in after working for some time?

A That they were asked to wait?

Q Or that they did wait?

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A I think it was my ex-fiance at the time. I don't remember.

Q When did you prepare this?

A Sometime in 2004. Late portion of 2004.

Q What caused you to do that?

A We attempted to have the employees punch in and out on the time cards. But as I said before, they, for whatever reason, they did not do it. So this was the next best thing that they understood what was going on.

Q This was a substitute for their punching in and out?

A Yes.

Q Were you present when any of these were given to the employees to sign?

A No.

Q Do you know who did give them to the employees to sign?

A I gave them to Raj with the assistance of Christian Cherez, C-H-E-R-R-E-Z, who speaks fluent English and Spanish, with the instructions to explain the policy to those signing it.

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A No.

Q Neither of those?

A No.

Q Okay. Did anyone ever complain to you that they had been sent to work at a different garage from the one they were usually assigned to and they were not being paid for the time at the other garage?

A There were isolated incidents where either Raj forgot to put their hours on the sheet or I did not pick it up. But for whatever reason, the hours were missed. Raj would receive the complaint and the hours would be added in the following week.

Q Do you recall any specific instances?

A I don't recall specific instances, but I know it happened once -- more than once with Angelo Pena; and it happened, I believe, once with Franklin Santana. It happened once with one other employee. I just don't remember his name.

Q What records, if any, would show the missed hours being added in at a later time?

A On the following week's paystub, there

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would be whatever the amount of hours were coded under "P." for previous.

Q Let's look at Exhibit 8. (Handing.) Do you recognize that?

A Yes.

Q What is it?

A It looks like somebody pressed print screen in one of my Excel spreadsheets.

Q How can you tell it's a print screen printout?

A I'm not sure if it is or it isn't, but I don't print out the columns and the row numbers and I don't print out with the grid.

Q I see. Okay, leaving aside the column and row headers and the grid lines, is the information here information from one of your spreadsheets?

A Yes.

Q And which -- period ending 1-6-08 for J&I?

A Yes.

Q Can you tell me what information is in each column?

A It's basically the same as the other

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sheet we were referring to earlier. Hours, gross pay, net, cash, cash rounded. Total net pay. These numbers, I'm not really sure what the last two columns are. It doesn't look like they're being used for anything, because the -- where it says number DIV/zero, it just refers to there's no information for that to find.

Q Can you tell me where each of the entries comes from if we read across? How about Raphael Pena -- he's got zeroes, Raphael Pena. Just so I understand how this works, suppose we take Juan Fuentes.

A Okay.

Q Can you tell me where each of those numbers comes from going across there?

A Ten would come from one of Raj's sheets that he would send me.

Q That's hours?

A Yes, 71.50 would come from one of the ADP reports. That's his gross check that's attributed to this location.

Q Okay.

A Ten hours is something Juan Fuentes doesn't usually work. He usually works a full

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week, so I'm guessing this week he worked in another location. 65.67 is his net check for this particular location. 17.63 is what we needed to add in in cash -- because this is somebody that -- again, an old employee of Jose Tavares -- to make up whatever he was making with Jose, which was 17.63, rounded up to \$18. The 83.30 simply looks like that's his gross, including the cash.

Q Okay. What about the 8.33?

A Well, looking at that, I'll take a guess that it's --

MS. MEYERS: Don't guess.

BY MR. BERNSTEIN:

Q Is that some sort of effective hourly rate?

A No.

Q It's not the 83.30 divided by 10?

A It could be, but there's no -- these last two columns have, at this point, no use. They might have been useful in '04 or '03. But at this point, as I said, I never updated the sheets. I just used whatever information was applicable.

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Q And why were these columns not of use at this point, these last two columns?

A I didn't do anything with them. The information went nowhere. That's why they're not printed.

Q And why was there no need to do anything with them?

A Because they didn't bother me.

Q Okay. Well, why don't we go back to -- well, first, why don't we look at Exhibit 16. (Handing.)

Tell me what kind of report this is.

A Similar to Exhibit 8, except this is something that I had to use while Jose Tavares or Jose Tavares' wife prepared the checks.

Q Now, is this -- let me back up a minute.

Did you keep printed copies of your spreadsheets?

A No.

Q Is this something -- this particular document, is this something that you printed out?

A I never printed it out.



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Q Do you know who did?

A Again, it looks like somebody pressed print screen on one of my Excel spreadsheets.

Q Do you know if that was done in order to print it for the document production in the lawsuit?

A I don't know.

Q Let's look at Exhibit 18. (Handing.) This says "Weekly Comparison"?

A Right.

Q Is this a type of report that you -- or spreadsheet that you prepared?

A It's a spreadsheet that I prepared, yes.

Q And for what purpose?

A Again, this is at a period of time where we were relying on Jose Tavares for payroll still.

Q Okay.

A I just did a current week to previous week comparison to make sure they were somewhat close to each other.

Q Were there particular numbers that you were comparing from week to week?

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difference, not really worth looking at why it was \$53.73.

Q That's a difference in the cash amount?

A Column K appears to be a difference in the cash amount.

Q So when you prepared this type of report, the weekly comparison, you already had available for the various workers the hours, the check amount and the cash amount?

A Yes.

MR. BERNSTEIN: Let's mark as Exhibit 20 documents produced by your attorney Bates No. 1989 and 1990.

(Whereupon, Bates No. 1989 and 1990 was marked as Plaintiff's Exhibit 20 for identification, as of this date.)

BY MR. BERNSTEIN:

Q Have you had a chance to look at Exhibit 20? (Handing.)

A Yes.

Q Do you recognize it or the information in it?

A Again, it looks like somebody pressed

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A I'm guessing that I -- I honestly don't remember. I don't remember what I was doing here. I remember that I did it because I just -- we were relying totally on Jose Tavares and I just needed to make sure that the numbers were within a certain range from week to week.

Q What type of range? When you say within a certain range, can you help me understand what you mean by that?

A Hours, check totals and cash totals.

Q What was the range? How did you know something was out of range?

A Here's an example, 452 were the total hours for Kide. If all of a sudden it went to a thousand, we'd know it would be a problem.

Q So you were interested to compare the total hours for a garage?

A Not just total hours, more the gross numbers. I shouldn't say the gross numbers. The total numbers. Hours 452, check 242749, cash 667.7. That's what the totals for the location were that week. The previous week, they were 403, 2171 613.97. So it gave me a difference of \$53.73. It's a negligible

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the print key in one of my Excel spreadsheets.

Q You don't know who or when?

A No.

Q What type spreadsheet are we looking at?

A It's similar to the exhibit that we were looking at before. It gives the net pay, hours, net check, cash given, cash rounded and the net rate that I had to use to get to this -- to the net pay.

Q The first column says pay, and there's a column of ones there. Can you tell me what that means?

A Nothing. It means absolutely nothing. When I exported information from one sheet to another, ones were just an identifier to make sure I only got the name once.

Q The name of the column?

A No, the name of the employee.

Q Okay. Then net, what number is that in the net column?

A That's what they need to get net to make their pay the same as when they were totally with Jose Tavares.

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Q And where did that number come from? Like, for example, if we look at Rolando Rojas, he's got 375. Where would you get that from?

A Rolando Rojas, we were given 375 for 60 hours. I divided 375 by 60 and came up with 6.25.

Q And the number of hours, that came from the summary that you got from Raj?

A Those are the number of hours that he worked that particular week.

Q Where did you get those numbers from?

A From -- at this point, I got them either from Raj or from Jose Tavares. I'm not sure.

Q Now, the 40 plus 20 for the hours here, does that include lunch hour?

A Yes.

Q And how do you know that?

A Because if he worked a five-day week times 12 is 60 minus one per day would be 55. Here it's 60. So that includes their lunch hour.

Q And the net 375 is the amount that the employee has to -- is supposed to go home with

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Q Rounded to 74?

A Right.

Q I think you said the 375 divided by 60 would be 6.25?

A I believe so, yes.

Q We can certainly double-check that. It is.

A Okay.

Q How did you utilize the 6.25 number?

A Again, it was a net number. It was explained to me through either Jose or his wife. I don't know which, that these guys didn't understand gross or any of that. They only understood what they went home with. So we had to take -- his agreement with an employee was if you work -- let's take Rolando Rojas. If you work 60 hours, you're getting \$375 in any combination that he decided to give it.

Q Combination of check and cash?

A Right. That Jose decided to give it. We, on the other hand, insisted on a certain portion being in the check. Meaning 40 plus 15. But again, we still had to deal with the net issue. So the only way for me to deal with the

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in his pocket?

A Yes.

Q As some combination of check and cash?

A Yes.

Q And that was a number that you got in some way from Jose Tavares?

A Yes.

Q What about the numbers in the check and cash column, where does the check number come from?

A At this particular time, it came directly from the check.

Q And is that -- that's the net pay on the check, the actual amount of the check?

A If the employee were to cash it, that's how much he would cash the check for.

Q So the amount in the C column, is that the difference between the 375 and the 301.27?

A I don't see 301.27 -- I'm looking at the wrong column. Yes, that is correct.

Q So if he's supposed to get 375 in his pocket and his check is 301.27, then he gets 73.73 in cash?

A Yes.

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net issue was to figure it out.

Q And by you had to deal with the net issue meaning --

A We could not pay the employees gross. We had to pay them in a net format.

Q Again, I'm not sure what you mean by that.

A In other words, I think the easiest way for me to explain it, I could not give an employee a check for 40 hours plus 15 hours and then add \$5.15 for five hours for their lunch. According to Jose and his wife, it didn't work. They said they tried it. I don't remember who told it to me. It was one or the other. So we just continued to pay the way Jose paid, net.

Q And by that you mean paying them a number that Jose was paying them?

A Correct.

Q In their pocket?

A Net, in their pocket. That was Jose's agreement with the attendants.

Q I see.

So in the case of Rolando Rojas, where it says check 30127 --



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A Uh-huh.

Q -- was that a number that was supplied by ADP or something else?

A In -- at this time, I did not actually get the reports. I only got the checks, so I had to actually get that number off of the check.

Q Do you know how ADP arrived at the 301.27?

MS. MEYERS: Objection. I don't believe he said it was ADP.

MR. BERNSTEIN: Or wherever the check came from.

A Well, it was ADP. I do not recall what the gross amount was. Again, I did not process these checks. Jose or Jose's wife processed them.

Q I see. So they arrived at the net number, they took the gross, took out whatever taxes were mandatory and that's how they got the net.

Do you know how they computed the gross number?

A From whatever hours Jose or his wife

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submitted to them.

Q Do you know if that included time for a lunch break?

A I have no idea. I don't know what they submitted, so there's no way for me to know.

MR. BERNSTEIN: Let's mark as

Exhibit 21 documents produced by your attorney. It's Bates numbers 2023 to 2027.

(Whereupon, Bates numbers 2023 to 2027 was marked as Plaintiff's Exhibit 21 for identification, as of this date.)

BY MR. BERNSTEIN:

Q Is this another printout or series of printouts from your spreadsheets? (Handing.)

A Yes.

Q Do you know who printed it out or when?

A No.

Q This says it's for the period ending August 3rd, '03.

A Yes.

Q Up at the top?

A Yes.

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Q Was Jose Tavares still involved in the payroll process at that point?

A Not at all. At this point, it became J&amp;I and Marvel, and the ADP system that we're currently using was active or became active.

Q Which facilities was Marvel?

A 145th Street.

Q So if I look at Miguel Alcatara, is the first one there under Marvel?

A Uh-huh.

Q He has 36 regular and 12 overtime hours?

A Correct.

Q That's what it says?

A Correct.

Q Are those numbers that you entered into the spreadsheet?

A Yes.

Q And where did you get them from?

A Raj.

Q It was on a list or a grid that you got from Raj?

A One of those lists that we were discussing before.

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Q Now, did Raj ever give you 36 and 12, or did he give you a total?

A No, he gave me a total.

Q 48 would be the total?

A Yes. Uh-huh.

Q Was the breakdown to 36 and 12 written on there by Sam or you figured it out yourself or something else?

A I believe this was done by me, and there was no real reason for it. It didn't impact how it was input to the check, how the check was made. It was just at some point when I originally made this sheet, it was made with paying people from the sheet in whatever hours and breakdown was on the sheet. I later changed it to just show total hours and didn't separate it out.

Q When did you change it to total hours?

A I don't remember. It's in one of those sheets somewhere.

Q So on this sheet, the 36 and 12 is an arbitrary breakdown?

A Yes.

Q Net 280, where does that number come

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from?

A That would have come from one of the ADP reports, specifically the labor distribution report.

Q Is that --

A Oh, I'm sorry. That number does not come from the ADP report. My mistake. The 280 is what he needs to get net to make his pay what it was while he was with Jose.

Q And how did you know that that number was 280 in this case?

A Same way I knew about the others. Originally, we took the numbers that were given to us by Jose and divided them. In his particular case, I believe it's 583 net.

Q Well, there is a 583 in one of those last columns there. I'm still not sure I understand. Is the 280 a number that you were actually given by Jose Tavares?

A No. The 280 did not -- this 280 did not come from Jose Tavares. If we go back to one of the sheets that Jose Tavares was providing -- I shouldn't say providing.

While he was doing the payroll, the

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net number would have come from him. In this particular case, no, the net number came from a calculation based on 48 hours times 5.83. I'm willing to bet comes up to 280. Do we want to bet first?

Q No. It's within pennies, so yes.

A Okay.

Q Is the 5.83 a number you got from Jose Tavares?

A He did not specifically give me the number 5.83. I had to calculate it out in order to continue to do payroll in an efficient manner.

Q How did you calculate -- what calculation did you do to get to the 5.83 in this case?

A Originally, Jose Tavares or his wife would have given me a net number for a specific amount of hours. What I would do is take that, divide it out, figure out how much that comes out to net per hour and just carried that net rate over.

Q Okay. The check number, that comes from ADP?

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A In the case of Exhibit 21, that would have come from ADP's distribution report in the case of Miguel Alcantara.

Q Okay.

A Net check, you said?

Q Yes. That came from ADP?

A Yes.

Q And that was the number on Mr. Alcantara's check if he worked only at that location?

A Yes. But I'm looking at this, and I see he did not only work at that location. So if you take 48.06 plus 222.75, that's what would have been on his check.

Q And how did ADP know what number -- you know, how much to put on his check?

A To distribute, you mean, or the total?

Q The total. I guess this is a total net pay.

A If you take 48.06 plus 222.75, that's a net pay, yes.

Q They get to the total net pay by taking withholding or deductions from something?

A They take the gross minus the

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withholding and come up with net.

Q And where do they get the gross from?

A I submit to ADP the hours 40 plus whatever overtime is applicable. They multiply it by the base rate at this time was 5.15. Then for overtime they take 5.15 times 1.5 times whatever the overtime hours are.

Q So in this case you submitted to ADP, I guess, 40 plus 16?

A Twelve plus 48.

Q I'm sorry, that's not right. He has 36 at one facility and eight at the other?

A No. He's got 48 at Marvel and 12 at J&I.

Q No, I'm just looking at regular hours.

A That's not what was submitted though. Because if you added it up, it just doesn't work out right. What would have been submitted to ADP was 40 plus 15. Forty regular, 15 overtime.

Q And how do you know it was 40 plus 15?

A I could certainly go back to one of those exhibits you showed me before, and it would show it on his -- on the replication of his paystub, but I also know how I did payroll



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at the time. He worked 60 hours -- I mean, he worked 55 hours plus six hours for -- five hours for lunch. So he worked five days 12 hours a day minus an hour for lunch every day is 55 hours.

**Q** So the regular hours and overtime hours on the sheet here, those numbers did not go to ADP?

**A** No.

**Q** Is that -- at this point, is that also an arbitrary breakdown?

**A** I'm not sure. It's a long time ago. I just don't remember. I remember when I did the sheet that I was looking towards the future, and that's why I broke down regular and OT. But that future never -- we took a different path.

**Q** And what was the different path?

**A** At this time I believe ADP was going to have a system where I could just export this to them.

**Q** Export a spreadsheet?

**A** Export a spreadsheet, export specific cells from a spreadsheet so I wouldn't have to enter it into ADP's program, but it never

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previous, those are the cash amounts for the employees?

**A** Yes.

**Q** And what about the other current and previous, is that hours or something else?

**A** Hours.

(Whereupon, a break was taken.)

BY MR. BERNSTEIN:

**Q** Have you had any responsibility for preparing tax returns for SP Payroll?

**A** No.

**Q** Do you know who does that or who did that?

**A** Sam.

**Q** Did you provide information to Sam or do you provide information to Sam for payroll tax returns?

**A** Just the quarterly reports from ADP.

**Q** Is that the current -- your current practice on quarterly reports from ADP?

**A** That's the only thing with tax on it that I would give to Sam.

**Q** Has that been the practice since you started handling the payroll?

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happened. So when that never happened, I just -- I consolidated the regular hours column and the OT column into one column.

**Q** Can you tell me what the numbers in the last three columns represent on the next page?

**A** Same as in the previous spreadsheets. They were net -- net rate as based on net pays that we were given by Jose Tavares.

**Q** And the last column, is that a copy of the first column?

**A** I believe I did it as a check column to column F, just to make sure there were no mathematical or any sort of errors.

**Q** I see. Then on the next page, can you tell me what information is on that part of the spreadsheet?

**A** Similar to one of the other spreadsheets that you showed me. I created a quick spreadsheet to compare one week to another to make sure there were no major differences. It was really to check myself to make sure there were no errors.

**Q** Where it says cash current and cash

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**A** Yes.

**Q** Do you know if the cash amounts that were paid to the employees were included in the base for computing payroll taxes?

**A** I don't know.

MR. BERNSTEIN: Let's mark as Plaintiff's Exhibit 22 documents produced by your attorney Bates stamped 1470 to 1474.

(Whereupon, Bates stamped 1470 to 1474 was marked as Plaintiff's Exhibit 22 for identification, as of this date.)

BY MR. BERNSTEIN:

**Q** This is titled Procedures and Rules. (Handing.)

My next question is do you recognize that document?

**A** Yes.

**Q** Okay. What is it?

**A** It is a document that was handed out to the employees or a variation of a document that's handed out to the employees every -- once or twice a year.

**Q** When was it first given to the employees?

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A 2006, maybe.

Q You're asking me?

A I'm taking a guess. It's somewhere in 2006.

Q Is it something that you prepared?

A Yes. It's actually something I prepared 20 years ago. I just kind of used a variation of it.

Q Is it something that you were asked to start distributing to the employees or have distributed to the employees?

A Did somebody ask me to do it?

Q Yes. How did it come about that the Rules and Procedures was given out to the employees starting sometime around 2006? What started that?

A We had been involved in an unemployment hearing, and we lost the hearing because I couldn't prove the employee knew not to wash cars while on a shift without permission. So because of that, I started to, at random times, give out and update a Rules and Procedures pamphlet.

Q Was there a problem with employees not

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taking lunch breaks at that time?

A Not taking lunch breaks?

Q Right.

A They always took lunch breaks.

Q And again, what's your basis for saying that?

A I personally witnessed a couple. I've been in the business for over 20 years. I know that employees do not spend their entire time in the garage.

MR. BERNSTEIN: Off the record.

(Whereupon, a discussion was held off the record.)

MR. BERNSTEIN: Back on the record.  
BY MR. BERNSTEIN:

Q Have there been times when the workers were taking lunch breaks and they were being paid for their lunch hour?

A Yes.

Q Who made the decision to pay them for lunch hour?

A Sam.

Q Is that something you discussed with him?

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A No.

Q Did you ever ask him why he was doing that?

A No.

Q Did anyone ever tell you why Sam had decided to do things that way?

A No.

MR. BERNSTEIN: Off the record.

(Whereupon, a discussion was held off the record.)

BY MR. BERNSTEIN:

Q At the point where the employees were no longer being paid for their lunch hour -- because I think you said there came a time when Sam decided to no longer pay the workers for their lunch hour?

A Yes.

Q Okay. Do you know whether the employees continued to take a lunch hour or not?

A Yes.

Q What do you know about that?

A They continued to take their lunch hour, same as they did before.

Q And how do you know that?

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A I've witnessed it on a couple of occasions.

Q Other than that, do you have any basis for your answer?

A Other than witnessing it?

Q Yes.

A Raj would tell me, but that's about it.

Q What did Raj tell you?

A On one occasion, I remember he was in a location and he had to wait until the guy came back before he left.

Q And Raj told you that whoever it was was on a lunch break?

A He told me a break. He didn't specifically say lunch.

Q Was there a practice or a policy whereby someone would cover for an employee who was taking a break, a lunch break?

A If there were two men on duty, it was very simple. The second man -- one man would cover for the other. One garage has -- is connected to another garage. So when one man goes out, the attendant from one garage covers



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both.

Q When you say one garage is connected to another garage?

A They're right next door.

Q Which garages?

A Sage and Bien.

Q What about the other garages, though?

A They all have more than one person per shift.

MR. BERNSTEIN: I think we're done.

Let me just check my notes for a second.

(Whereupon, a discussion was held off the record.)

MR. BERNSTEIN: I do have one more question.

BY MR. BERNSTEIN:

Q When you got information from Jose Tavares about the net amount, I think you called it, that he was paying various employees, was that in the form of a list or some other kind of written form? Was it verbal or something else?

A I believe I said earlier that it was a list, and it was a list that was very difficult to comprehend.

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Q Was it a list of weekly salaries or hourly rates or something else?

A It was weekly, names of employees, gross amount next to the name, amount of hours that gross amount was for. I'm pretty sure that's all that was on the list. Some other scribble that I have no idea what it's for.

Q And by gross amount you mean --

A Sorry, net amount. Net amount.

Q And that was the amount that the employees took home, as far as you know?

A That was their net pay for whatever amount of hours that was written next to that amount.

Q So it had names, hours and amounts?

A I think it was names, amounts and hours.

Q Was there any division as between regular and overtime hours on that list?

A No.

Q When you got this list from Jose Tavares -- withdrawn.

First of all, do you know if anyone else had copies of it?

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Q Why was it difficult to comprehend?

A Because it was handwritten, and I could barely read it.

Q It was hard to read the handwriting?

A Yes.

Q Was it a list of names and amounts?

A Yes.

Q Do you know where that list is today?

A No idea.

Q When was the last time you saw it?

A 2003.

Q I take it you didn't come across it in gathering records for -- to turn over in the lawsuit?

A No.

Q When you last saw it, where was it? Was it at the SP Payroll office or somewhere else?

A I don't remember.

Q Do you remember the circumstances?

A I don't remember.

Q Was it a list you referred to on a regular basis or frequently?

A No.

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A I don't know.

Q Like Sam or Raj or anybody?

A I don't know. What I did say is I got them from either Jose, his wife, and I don't remember whether I got them directly or whether Raj brought them to me. I don't remember.

Q "Them" meaning more than one list?

A No. "They" meaning Jose or his wife.

Q I see.

When you got the list, did you make some kind of record of your own with the information in it or put it into a computer or do anything else to -- so that you would not have to keep referring back to it?

A The first payroll that I had done from the list, which is one of these exhibits, has the numbers that correlate with what was on the list.

Q Is the first payroll -- you say the first payroll that you did when you took over the payroll function, am I understanding you correctly?

A No. The first payroll that I had to figure out how much cash to give them, Jose

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and/or his wife. I don't know who submitted their payroll. But that first payroll that I had to figure it out, I had to -- it was based upon the list that I had gotten from either Jose or his wife. I think her name is Isabel.

**Q** So from that point, the numbers that you got from Jose or his wife were inputted into your computer?

**A** They were input into that first spreadsheet.

**Q** And you think that that first spreadsheet is one that we looked at today?

**A** I believe it is one of the ones that we looked at. I remember seeing a spreadsheet that said May, and that's when we started to manage the facility.

**Q** May of '03?

**A** May of '03.

**Q** If you just bear with me and let's see if we can find it.

**A** It's one that's going to say Marvel or Kile on it.

**Q** Maybe Exhibit 16? (Hanging.)

**A** This is not the first payroll. The

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first payroll, without seeing a calendar, would be the 7th, 8th, 9th. Some date around there.

**Q** The 7th, 8th or 9th in May of '03?

**A** Yeah. The period ending would have been -- might have been -- it's either going to be the first or second Sunday of the month.

**Q** Of May 2003?

**A** Yes. Again, it depends on what -- what the calendar says.

Yes. So if you show me a calendar, I might be able to figure it out a little better. The first payroll that I would have done would have most probably been the 11th, because the 4th was only four days.

**Q** So that would be the date --

**A** This would've been the first complete week that we had, we operated the garage. The 11th would have been the first complete pay week.

**Q** And the 11th is the pay period ending day?

**A** Yes.

**Q** I see. Okay. So if we could find that spreadsheet, that would be the first one

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that you did, using the information from Jose?

**A** Most probably.

**Q** From the Tavares family?

**A** Right.

MR. BERNSTEIN: I have no other questions at this time. If there are further documents that come to light, we may have.

MS. MEYERS: We consider it concluded.  
(Time noted 3:20 p.m.)

DAVID SAPERSTEIN

Subscribed and sworn to before me  
this       day of       , 2008.

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# PROCEEDINGS CERTIFICATE

I, JUDI JOHNSON, RPR, CRR, CLR, a Notary Public in and for the State of New York, do hereby certify:

THAT the witness whose testimony is hereinbefore set forth, was duly sworn by me; and

THAT the within transcript is a true record of the testimony given by said witness. I further certify that I am not related, either by blood or marriage, to any of the parties to this action; and THAT I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2008.

JUDI JOHNSON, RPR, CRR, CLR



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ERRATA SHEET

NAME OF CASE: PENA V. SP PAYROLL  
DATE OF DEPOSITION: June 18, 2008  
NAME OF WITNESS: DAVID SAPERSTEIN

Reason codes:

1. To clarify the record.
2. To conform to the facts
3. To correct the transcription errors.

11	Page _____	Line _____	Reason _____
12	From _____	to _____	
13	Page _____	Line _____	Reason _____
14	From _____	to _____	
15	Page _____	Line _____	Reason _____
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DAVID SAPERSTEIN